

MICHAEL D. MURPHY
MDMurphy@foxrothschild.com
MATTHEW FOLLETT
MFollett@foxrothschild.com>
FOX ROTHSCHILD LLP
Constellation Place
10250 Constellation Boulevard, Suite 900
Los Angeles, California 90067
Telephone: 310.598.4150
Facsimile: 310.556.9828

Attorneys for Plaintiff and Counterclaim
Defendant SHAKEY'S PIZZA ASIA
VENTURES, INC. and Third-Party Defendants
CINCO CORPORATION, PC
INTERNATIONAL PTE LTD., and SPAVI
INTERNATIONAL USA, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHAKEY'S PIZZA ASIA VENTURES,
INC, a Philippines corporation,

Plaintiff,

v.

PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING,
LLC, a Delaware limited liability
company; GUY KOREN, an individual;
POTATO CORNER LA GROUP, LLC,
a California limited liability company;
NKM CAPITAL GROUP, LLC, a
California limited liability company;
J & K AMERICANA, LLC, a California
limited liability company; J&K
LAKEWOOD, LLC, a California
limited liability company; J&K
VALLEY FAIR, LLC, a California
limited liability company; J & K
ONTARIO, LLC, a California limited
liability company; HLK MILPITAS,
LLC, a California, limited liability
company; GK CERRITOS, LLC, a
California, limited liability company;
J&K PC TRUCKS, LLC, a California
limited liability company; and, GK
CAPITAL GROUP, LLC, a California
limited liability company and DOES 1
through 100, inclusive,

Case No. 2:24-CV-04546-SB(GRX)

The Hon. Stanley Blumenfeld, Jr.

**RESPONSE TO OBJECTIONS BY
PCJV USA PARTIES
REGARDING MAGISTRATE
JUDGE'S REPORT AND
RECOMMENDATION [DKT. 204]**

Complaint Filed: May 31, 2024
Trial Date: August 4, 2025

Defendants.

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Counter-Claimants,

v.

SHAKEY'S PIZZA ASIA VENTURES, INC, a Philippines corporation,

Counter Defendant.

PCJV USA, LLC, a Delaware limited liability company; PCI TRADING LLC, a Delaware limited liability company; POTATO CORNER LA GROUP LLC, a California limited liability company; GK CAPITAL GROUP, LLC, a California limited liability company; NKM CAPITAL GROUP LLC, a California limited liability company; and GUY KOREN, an individual,

Third Party Plaintiffs,

v.

PC INTERNATIONAL PTE LTD., a Singapore business entity; SPAVI INTERNATIONAL USA, INC., a California corporation; CINCO CORPORATION, a Philippines corporation; and DOES 1 through 10, inclusive,

Third Party Defendants.

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1 Plaintiff and Counter Defendant SHAKEY'S PIZZA ASIA VENTURES,
2 INC ("SPAVI"); PC INTERNATIONAL PTE LTD; SPAVI INTERNATIONAL
3 USA, INC; and CINCO CORPORATION (all collectively, the "SPAVI Parties")
4 submit this response to the objections (the "Objections") of Defendants,
5 Counterclaimants, and Third Party Plaintiffs ("PCJV USA Parties" or
6 "Defendants") to the Report And Recommendation Re: Defendants' Motion for
7 Sanctions ("the Report" or "R&R") by Magistrate Judge Alicia G. Rosenberg.¹
8 Dkts. 204 & 211.

9 **I. INTRODUCTION**

10 Defendant PCJV USA, LLC used to offer franchises domestically for the
11 brand Potato Corner. Potato Corner's new owner – SPAVI – was unable to strike a
12 licensing deal with PCJV, after two years of negotiating, and, as such, SPAVI, the
13 terminated PCJV's implied revocable at will license. According to McCarthy on
14 Trademarks, "the terminated dealer who is a "hold-over" and refuses to change the
15 mark is an infringer." (3 McCarthy on Trademarks and Unfair Competition, §
16 25:31 (§ 25:31 ("The holdover licensee—Use of mark by ex-licensee is trademark
17 infringement, 3 McCarthy on Trademarks and Unfair Competition § 25:31 (5th
18 ed.).)

19 Defendant Guy Koren, the effective owner of PCJV and each of the affiliate
20 stores, as well as the owner of PCJV, which has entered into franchise agreements
21 with third parties, has never produced an agreement giving PCJV licensing rights
22 after May 31, 2024. That is because none exists. At the injunction proceeding,
23 Defendants proffered law and facts to support their claim that two documents give
24 them rights today, although each has already been dispensed by the 9th Circuit and
25 now constitute the law of the case; a "doctrine that requires a district court to follow

26 _____
27 ¹ The SPAVI Parties respectfully note that they are responding as best possible
28 under the circumstances; specifically, that while the PCJV USA Parties had seven
days to draft their Objections after the Court issued its July 1 Order, the SPAVI
Parties had two days to draft a response to them.

1 the appellate court's resolution of an issue of law in all subsequent proceedings in
2 the same case.” *U.S. ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1186 (9th
3 Cir. 2001), *overruled by Stein v. Kaiser Found. Health Plan, Inc.*, 115 F.4th 1244
4 (9th Cir. 2024).

5 Rather than find a way out of this case, which is now a damages case,
6 Defendants now reveal that their strategy will be to cause chaos by forcing
7 Plaintiffs to defend legal claims and factual arguments that are not in any way
8 supported by law and fact, notwithstanding the certification to the reverse effect.

9 Defendants’ objections – served at midnight the night it was due (after
10 having seven days to prepare it), so as to minimize the time available to respond –
11 confirm this strategy.

12 They claim an Order following a motion to compel was violated. It was not.
13 They claim that their Requests for Production were ordered to be complied with.
14 They were not. Instead, the Magistrate procured agreements to produce a select
15 category of documents and conduct searches based on mutually agreeable search
16 terms.

17 As to the former, SPAVI complied. As to the latter, SPAVI tried to meet and
18 confer, but Defendants refused, resulting in voluminous production that could not
19 possibly be reviewed in time. This was Defendants’ fault, not Plaintiff, given the
20 refusal to meet and confer.

21 Defendants also claim entitlement to documents relating to the deal to Cinco
22 and SPAVI. They do not. Relying upon a legal theory that is precluded and contrary
23 to multiple authorities and based on facts that do not exist, Defendants wish to
24 strike Plaintiffs’ entire case for trademark infringement and trade secret theft, based
25 upon the proper refusal of Plaintiffs to comply based on well-founded objections.

26 What Plaintiff agreed to, in the narrow March 12 Order, are only peripherally
27 tied to the Requests at issue. When the Cinco – SPAVI deal documents were
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1 reviewed by Plaintiffs' counsel, it was revealed that the entire massive document
2 would be redacted, if in compliance with the Order. As such, in an attempt to help
3 Defendants, Plaintiff offered to show the whole unredacted agreement under limited
4 circumstances so that they could see nothing contained therein would be beneficial.

5 Rather than meet and confer, Defendants' ignored the email, advised the
6 Magistrate, again, falsely, that this part of the order was ignored by Plaintiff, and
7 sought orders that Plaintiff may not seek damages on its trademark case because of
8 this document they were never entitled to, no order commanded the production of,
9 and that was offered under limited circumstances as an attempt to meet and confer.
10 Bootstrapping on that fact pattern, Defendants seek the death penalty against
11 Plaintiff by not providing an irrelevant document that does not help them and for
12 which objections were preserved from the outset.

13 Defendants' Objections to the Report should be overruled for additional
14 reasons. The scattershot failure to comply with the requisite elements of a sanctions
15 motion requiring, in essence, an order, knowing violation of the specific order that
16 specifically causes prejudice, met, and conferred upon in good faith, warranting a
17 narrowly tailored issue sanction. *See, e.g., Navellier v. Sletten*, 262 F.3d 923, 947–
18 48 (9th Cir. 2001) (discussing these factors and also holding, which was never
19 addressed by Defendants, why this should be the *first* sanction.) Reliance on
20 sweeping generalizations without support, PCJV seeks the death penalty in a case,
21 where, notably, the only documents the PCJV Parties have produced in this case,
22 entirely, are its injunction exhibits and those the Magistrate ordered them to
23 produce on April 4th 2025.

24 That should not be lost on anyone, as contrast to the documented efforts by
25 Plaintiff's counsel to comply under the very difficult circumstances to which
26 Defendant contributed at best and calculated at worst.

1 **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

2 SPAVI is a restaurant chain and food service company that is the sole owner
3 of the “Potato Corner” brand, an international fast food outlet chain that proudly
4 sells a variety of flavored fries and other menu items. At issue in this case is
5 Defendant PCJV USA, LLC’s (“PCJV”) loss of rights to use the brand, on May 31,
6 2024, after a decade and a half of being the sole licensee in the United States, and
7 opening nearly forty stores, without paying a single thin cent for the rights to the
8 brand. PCJV ignored the termination of its license, and continued using the Potato
9 Corner brand, causing this lawsuit to be filed against PCJV and its principal
10 (Defendant Guy Koren) who owns and controls the remaining Defendants who
11 operate Potato Corners under sublicenses with PCJV (which is also terminated).
12 PCJV desperately wants to prove that its rights to use the brand continued
13 after May 31, 2024 (even though there was no written license agreement). Those
14 efforts have failed spectacularly, as PCJV and Koren have since been enjoined from
15 using the Potato Corner brand, and their knowing refusal to comply with that order
16 has resulted in one contempt ruling. (Dkt. Nos. 56, 155.)

17 Nevertheless, PCJV is keen on lobbing the same alleged facts and legally
18 untenable arguments rejected during the injunction, particularly in contexts like
19 this, in which it is not bound by the obligation to substantiate a fact with competent
20 evidence or support its legal arguments with good law.

21 **A. Relevant Underlying Facts Supported by Evidence in the Record.**

22 “Potato Corner” was previously owned by Cinco, and as one of its founders,
23 Jose P. Magsaysay, Jr. testifies, it began with one potato corner cart in 1992 and
24 soon became a worldwide phenomenon. (Dkt. 44-3 (Magsaysay Decl., ¶ 2-12.)
25 In December 2021, SPAVI entered into a transaction to acquire the Potato
26 Corner Intellectual Property (“PCIP”) from the founders, including the international
27 registrations for the Potato Corner Standard Characters Mark, the Potato Corner
28

1 Logo Mark, one tag line mark, and all of the rights thereto, from Cinco. (Dkt. 44-10
2 through 44-15). That transaction closed during the first half of 2022. x
3 The dates of first use arise from Cinco's first use, and despite having said,
4 repeatedly, they used the marks first, this is untrue. Defendants have no proof that
5 they used the marks first, except in the context of the absurd argument that they, as
6 licensees of SPAVI used the marks in the United States first (on behalf of Cinco,
7 the licensor). This apparent claim, adverse possession by a licensor, is ludicrous
8 and, if it were the law, would collapse the entire trademark licensing regime by
9 making licensors and licensee adverse competitors.

10 SPAVI spent more than two years from the announcement of its acquisition
11 of the Potato Corner Intellectual Property attempting to enter into a written license
12 agreement with PCJV and PCIT. (Dkt 44-5 (Leong-Tan Decl. ¶ 33-66; and Dkt 44-
13 6 Alvero Decl. at ¶¶ 10-19). Despite SPAVI's good faith negotiations, Koren
14 abandoned the negotiations and was unwilling to enter a commercially viable
15 license agreement, refusing to produce financials for his stores. (Dkt 44-5, Leong-
16 Tan Decl. ¶ 52-66.) For these reasons, on May 31, 2024, SPAVI terminated the at
17 will license currently enjoyed by PCJV, PCIT, and the Koren Affiliates that operate
18 Potato Corner franchisees of PCJV.

19 On May 31, 2024, Plaintiff filed its Complaint against Defendants (Dkt. 1),
20 hours after Plaintiffs terminated the at will license of Defendant PCJV (licensee),
21 and its owner (Koren), the supply chain affiliate (PCIT), and sublicensees (the
22 remaining Defendants) refused to cease using the Trademarks. In fact, none of the
23 Defendants, let alone Koren, reached to communicate with SPAVI after receipt of
24 the letter, not even to ask to discuss the document – they pretended it never
25 happened. (Dkt. 38-1 (Gregorio Decl., 73.)
26
27
28

B. Defendants Embark on A Scorch Earth Campaign Marked By Tenuous at Best (And Thus Far all Rejected) Legal Theories and Factual Mischaracterizations.

For SPAVI, protection of its brand is key and a primary purpose of this litigation. (Murphy Decl., ¶¶ 3-7) Moreover, SPAVI must have the market cleared of the damage caused to the brand by Defendants, who, at the end of the day, are nothing holdover licensees who refuse to give up the rights they lost to someone else's brand.

Between September 20, 2024 and January 31, 2025, *alone*, Plaintiffs were forced to oppose ten Motions, Requests for Orders, or Requests for Emergency Orders (including two in the Ninth Circuit and one in front of SCOTUS. (Dkt. 173-1 ¶¶ 121-14; Dkt Nos. 41, 46, 58-61, 63-64, 71, 72-72, 75-78, 80, 85, 88-89, 92, 94, 95.) Half of these had to be briefed over Thanksgiving weekend, and the Christmas holiday (professional courtesies soundly denied). (Id.) Plaintiff, however, had multiple orders reaffirming the likelihood of success in this action on the trademark claims, and an injunction. However, the injunction was being so brazenly disregarded, an OSC re contempt was necessary. And that lengthy process ensued from December 26, 2024 through April 15, 2025 (Dkt. 155.)

Defendants' brazen strategy of burying the owner of the IP they are stealing with frivolous motions, disregarding Court orders in a contemptuous way, using frivolous theories and allegations of fact that are lacking in any probable cause in filing after filing has forced Plaintiffs to incur multiple 6-figures in attorneys' fees just to attempt to obtain injunction orders and coerce compliance – which Defendants still refuse. (Dkt. 173-1., ¶¶ 14-15.)

III. ARGUMENT

The Objections contain a subtle warning to Plaintiff and this Court: Defendants intend to use their time in front of a jury cite incorrect legal principles

1 and facts that do not exist; a strategy on which these Objections also rely.

2 **A. The Order was the Subject of Pre-Motion Informal Agreements**
3 **Not Motions to Compel**

4 Defendants seem confused as to the procedural posture, suggesting that the
5 Order at issue was from a Motion to Compel (it was not) and that “the Court
6 granted PCJV USA Parties’ motion and compelled the production of all documents
7 responsive to Plaintiff’s Requests for Production of Documents (“RFP”), Set One,
8 inclusive of “RFP Nos. 1 to 20” and a “privilege log,” with specific and limited
9 carveouts.” (Objections at 2:18-21.) This statement is simply incorrect. There was
10 no Motion, no objections were overruled, and what was ordered was a specific set
11 of documents, and to conduct searches using agreed upon search terms as to the
12 rest.

13 At the hearing on this Motion the Magistrate went through each category that
14 was the subject of the Order, and confirmed SPAVI’s compliance. The Objections
15 fail to note this, and fail to even attach the Transcript. *See also* LR 72-3.6.

16 Defendants complain that much of the responsive documents were found in
17 public filings, but that is exactly what was discussed on March 12, 2025. Publicly
18 traded companies make statements that are covered by the SEC rules, and that is
19 what was produced. Any Board minutes and financial statements related to Potato
20 Corner all are found in SEC filings, which Plaintiff produced.

21 The difficulties came down to the search terms, for most of the Requests,
22 which, as discussed below, is a problem of PCJV’s own making. Had they met and
23 conferred things might have turned out differently.

24 ***B. The Document Requests Complained About Were Never***
25 ***Ordered Produced, Are Wholly Inadmissible at Trial, And Given the***
26 ***Record, The Evidence That Matters if The Deed.***

27 The Objections State: “PCJV’s document requests all concerned one singular
28

1 transaction regarding Plaintiff's alleged acquisition of intellectual property put at
2 issue in Plaintiff's complaint, preliminary injunction papers and amended
3 complaint." Dkt. 211 at p. 11.

4 There is superior evidence of the sale is already in the record, and it is
5 conclusive proof that SPAVI is the owner. There are multiple different doctrines
6 that render the purchase and sale documents irrelevant.

7 First, the record evidence between the parties to the deal – Cinco and SPAVI
8 – is conclusive even if as PCJV hopes, the underlying contract is ambiguous. In
9 California's recitation of the merger rule states "[i]f the language of a deed is plain,
10 certain, and unambiguous, neither parol evidence nor surrounding facts and
11 circumstances will be considered to add to, detract from, or vary its terms or to
12 determine the estate conveyed. *See, e.g., Palos Verdes Corp. v. Hous. Auth. of Los*
13 *Angeles Cnty.*, 202 Cal. App. 2d 827, 836 (1962). The merger doctrine applies,
14 obviously to purchases of intellectual property as well. *See, generally, B. F.*
15 *Goodrich Co. v. A. T. I. Caribe, Inc.*, 366 F. Supp. 464, 467 (D. Del. 1973). As
16 such, the purchase and sale agreement is irrelevant and inadmissible as violative of
17 the merger doctrine given the clear and unambiguous deed.

18 Second, because PCJV was not a party to the transaction, it cannot challenge
19 the deed or representations contained therein., *See Imperial Residential Design, Inc.*
20 *v. Palms Dev. Grp., Inc.*, 70 F.3d 96, 99 (11th Cir. 1995) (agreeing that "that, where
21 there is no dispute between the copyright owner and the transferee about the status
22 of the copyright, it would be unusual and unwarranted to permit a third-party
23 infringer to invoke [the requirement of a writing memorializing the status] to avoid
24 suit for copyright infringement.") Indeed, PCJV has no standing to assert any
25 defects, even if there was a vague deed.

26 Third, and perhaps most significant, at all times prior to the termination,
27 PCJV, as "a licensee [] of a trademark or trade name may not set up any adverse
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1 claim in it as against its licensor.” *Pac. Supply Co-op. v. Farmers Union Cent.*
2 *Exch. Inc.*, 318 F.2d 894, 908 (9th Cir. 1963). Under the licensee estoppel doctrine,
3 the merger doctrine, or the standing doctrine, any of the deal documents are
4 inadmissible to disprove what is unequivocal in the Deed: SPAVI owns all of the
5 Potato Corner trademarks and associated goodwill.

6 **C. *Plaintiffs’ Objections Based on Relevance, Proportionality, and***
7 ***Financial Secrecy Were Never Evaluated.***

8 PCJV is a competitor of SPAVI, having incubated its competing brand as a
9 holdover licensee illegally operating as a Potato Corner. As a competitor, SPAVI
10 rightly objected to PCJV seeing the financial innards of an irrelevant transaction.
11 These objections were preserved, and were objections based on relevance and
12 proportionality.

13 PCJV makes a surprising presentation as to what transpired with the
14 Magistrate below, stating that the Objections State: “At the March 12 hearing, the
15 Court, for good reasons, overruled Plaintiff’s discovery objections as Plaintiff was
16 trying to suppress evidence it put at issue regarding the alleged acquisition of IP
17 rights in the U.S.” This is utterly false. To the contrary, the Magistrate (as
18 confirmed in the R&R ruled on some objections – by sustaining them. *See e.g.*, Dkt.
19 204.

20 Had Plaintiff refused to agree, it is confident its objections would prevail.
21 Plaintiff

22 Rather than go through the laborious process of opposing a Motion to
23 Compel, notwithstanding the objectionable nature of these requests seeking
24 irrelevant documents barred by multiple doctrines, Plaintiff agreed to produce what
25 it could that relates specifically to U.S. Operations, of which it turned out there was
26 no single document not covered by the attorney-client privilege. It is true that no
27 privilege log was produced, however, no argument has been made that the absence
28

1 of a log prepared in the last days of discovery identifying which attorneys were
2 party to which email predating the deed – irrelevant documents anyway – has
3 prejudiced Defendants one bit.

4 ***D. The Magistrate Judge Correctly Denied Defendants’ Call For***
5 ***De Facto Terminating Sanctions Because They Utterly Failed Not***
6 ***Only To Demonstrate Prejudice, But Tie Any Prejudice To Their***
7 ***Requested Relief.***

8 “Rule 37(b)(2) contains two standards – one general and one specific – that
9 limit a district court’s discretion.” *Ins. Corp. of Ireland v. Compagnie Des Bauxites*
10 *De Guinee*, 456 U.S. 694, 707 (1982). “First, any sanction must be ‘just,’” reflecting
11 “the general due process restrictions on the court’s discretion.” *Id.* “[S]econd, the
12 sanction must be specifically related to the particular ‘claim’ which was at issue in
13 the order to provide discovery.” *Id.* The mere violation of a discovery order
14 alone—even if considered in a vacuum and excluding the mitigating circumstances
15 that Plaintiff has demonstrate here does not warrant dismissal of a case unless the
16 opposing party shows it was prejudiced thereby. *See Coleman v. American Red*
17 *Cross* (6th Cir. 1994) 23 F3d 1091, 1095—violation of protective order by
18 plaintiff’s lawyer did not justify dismissal of action; *see Harmon v. CSX*
19 *Transportation, Inc.* (6th Cir. 1997) 110 F3d 364, 368—dismissal upheld where
20 counsel’s neglect in failing to respond to interrogatories prejudiced defendant’s trial
21 preparation.

22 Like their underlying motion, Defendants objections fail to ***credibly***
23 demonstrate (or demonstrate at all) that they were prejudiced by any failure to
24 comply with any specific aspect of the March 12., 2025 Order. *See Fed. R. Civ. P.*
25 *37(c)(1)* (“. . . unless the failure [to comply with Rule 26(e)] ... is harmless”); 7
26 James W.M. Moore, et al., *Moore's Federal Practice* § 37.63 (3d ed. 2009)
27 (sanctions may not be imposed if a party's failure to provide information as required
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1 by Rule 26(e) was harmless). Moreover, they fail to specifically tie any claimed
2 harmed to *de facto dispositive* sanctions they seek.

3 Defendants' Objections in no way rebut the findings by the magistrate that
4 they were not harmed by any noncompliance with the March order or that they
5 failed to adequately connect any prejudice to the sanctions they seek. *See e.g.*, Dkt.
6 204, pp. 15-16. (The Motion "failed to explain the prejudice [Defendants] suffers in
7 defending against SPAVI's claims or presenting evidence in support of the
8 counterclaims."); *see e.g.*, Dkt. 204, p. 12. (Defendants have "not shown any
9 prejudice from a 23-day delay in SPAVI's production of documents responsive to
10 these document requests."))

11 Defendants' only claims to purported prejudice are their conclusory
12 accusations that Plaintiff is "suppressing" a cornucopia of documents that will
13 somehow bolster their theories of fact and law that thus far that every single court
14 to have heard them has rejected. In support of their averments of suppression,
15 Defendants, for example, point to the Asset Purchase Agreement that has not yet
16 been produced—but which they do not deny that Plaintiff offered for them to
17 inspect *in person*. They curiously omit from explaining how Plaintiff could
18 simultaneously conspire to suppress documents while at the same time offering
19 Defendants a chance to look at them in person, which the magistrate judge—who
20 issued the March 12 Discovery Order—concluded actually "exceeded" the
21 requirements of her order. Dkt. 204, p. 10. Illogical averments aside, Defendants
22 point to not a single email, document, testimony, or anything else to suggest that
23 Plaintiff is suppressing or destroying evidence.

24 The magistrate judge astutely observed that Defendants have failed to
25 connect Plaintiff's purported violations with the sanctions that they request. Their
26 failure is all the more alarming because the sanctions they seek would prove *de*
27 *facto* terminating. If granted, it would be virtually—if not completely—impossible
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1 for Plaintiff to prevail on its claims, or for Defendants to *not* prevail on their cross-
2 claims. Defendants’ claim of wanting only to avoid “trial by ambush” must be
3 dismissed for what it is—a thinly-veiled pretext for a Hail Mary pass that asks the
4 Court to presume that the documents not yet produced just so happen to support
5 every single of one of their ill-fitted factual and legal theories. Had Defendants
6 *really* wanted to avoid “surprise” or “ambush,” they would have simply requested
7 that any documents not yet produced be disallowed.

8 **E. Defendants’ Averments About Plaintiff “Hostage Holding”**
9 **Rule 26 Documents Is A Poorly Disguised Attempt To Suggest That**
10 **Every Single Document That It Has Requested—including Those**
11 **the Magistrate Has Rejected As Overbroad—Falls Within The**
12 **Scope of Plaintiff’s Rule 26 Disclosures.**

13 Plaintiff has not held “hostage” any Rule 26 documents. The magistrate
14 judge articulated no such finding and Defendants have not evidenced anything to
15 support the claim. Throughout their Motion and Objections to the Report,
16 Defendants try to conflate without anyone noticing the documents that fall under
17 Rule 26 Disclosures and the documents that *they* aver having been put “at issue” by
18 virtue of Plaintiff’s claims and the claims that *Defendants* have asserted. No mind is
19 paid to the magistrate judge’s conclusion about the ones she deemed as facially
20 overbroad, “kitchen sink” requests, or as violative of attorney-client privilege.
21 Plaintiff makes its claim to the intellectual property rights at issue by virtue of the
22 contract that it entered with Cinco. By Defendants’ logic—much already soundly
23 rejected by the magistrate judge—this means that virtually every conceivable
24 document, including every single communication with anyone ever—including
25 those containing legal opinions—even tangentially related to the transaction
26 between Cinco and SPAVI falls with the purview of Rule 26 disclosures. Similarly
27 falling within the purview of the Rule 26 disclosures are documents sufficient “to
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1 compare *any businesses Plaintiff acquired in other countries* to the alleged IP
2 right Plaintiff allegedly acquired without the franchise business in the United
3 States.” (Dkt. 211, p. 12:2-4). The argument not only flies in the face of logic, it
4 flies in the face of any conceivable tenant regarding proportionality in discovery.

5 **F. The Report Does Not Err By Faulting PCJV USA Parties.**

6 The Objections attempt to frame the magistrate judge as having “excuse[d]
7 Plaintiff’s suppression of evidence in discovery, including failure to timely produce
8 documents within its own initial disclosures, then fault PCJV USA Parties for
9 initially believing Plaintiff actually wanted a trial continuance when, in reality,
10 Plaintiff was simply delaying its discovery obligations” (Dkt. 211, p.9:15-18) This
11 suggestion alone signals the suspicion with which the Court should consider this
12 argument.

13 Nowhere has the Court excused the suppression of evidence. Full stop. The
14 only half-hearted support for this claim appears to be Defendants’ own self-serving
15 claim that Plaintiff moved for an ex parte and that “there are good reasons to
16 believe Plaintiff just used the issue for delay and to avoid sanctions while
17 suppressing evidence.” No rhyme or reason is given on what exactly these “good
18 reasons” are or how the ex parte in any way caused a delay related to the discovery
19 issues before the magistrate judge.

20 **G. The Failure to Meet and Confer Throughout this Process**
21 **Caused the Delays About Which Plaintiffs Complain.**

22 The Court need look no further than Defendants’ repeated refusals to meet-
23 and-confer or compromise to get a peak at their true motivation in seeking much of
24 its discovery. Their refusal to meet-and-confer or compromise caused most of the
25 delay about which they complain. Defendant refused to meet-and-confer about
26 search terms, for example, which in turn yielded over 40,000 documents consisting
27 of multitudes of more pages. As evidenced by Plaintiff, the unwillingness to meet-
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1 and-confer over the terms further magnified the problem presented by the category
2 of documents sought, since Defendants are now actively competing with Plaintiff
3 and the documents reveal financial, operational, and strategic information.

4 **H. *The Objections Fail to Explain, Let Alone Address, PCJV's***
5 ***Failures in Disclosure Preventing Compliance with Certain***
6 ***Trade Secret Requests.***

7 In terms of documents related to SPAVI' trade secrets claims, Defendant
8 wholly-failed, as the magistrate judge recognized, to disclose which of the SPAVI
9 flavorings that Defendants sent to a third party for reverse engineering. This too
10 created the obstacle to production for which Defendants now cry foul. As the
11 magistrate judge keenly observed, "Without knowing whether or how Defendants
12 reverse engineered one or more flavorings, Plaintiff is unable to identify the
13 relevant agreements that it will contend prohibit Defendants from reverse
14 engineering in the manner they did." Dkt. 204 p. 19.

15 **I. *A Mere Glance At The Cases To Which Defendants Cite Reveal***
16 ***That Termination Sanctions Would Be Far Too Severe.***

17 In *Bridge Lines, Inc. v. Luxury Coach of America, LLC*, Case No. 5:24-cv-
18 00288-SPG-SPx, 2024 WL 5355588 (C.D. Cal. Nov. 15, 2024) the defendants
19 refused to sit for deposition or permit inspection of a bus and raised only objections
20 in response to plaintiff's interrogatories and requests for production. The defendant
21 also failed to respond to plaintiff's requests to meet and confer. The defendant failed
22 to comply with the court's order requiring responses, production, and making a
23 representative available for a deposition and had not produced any discovery as of
24 the filing of the motion for terminating sanctions.

25 The court issued terminating sanctions after the defendant received sufficient
26 warning regarding the potential for terminating sanctions. And, importantly the
27 court believed that no other sanctions were appropriate because the defendants
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1 counsel had withdrawn and the defendants failed to file a substitution of attorney
2 form or an intent to proceed pro se and after its counsel withdrew it failed to
3 respond in the case in any manner. “Defendant's complete lack of response to the
4 court's order indicates it does not intend to litigate this action properly, but rather
5 intends to defy the court's discovery orders.”

6 In *Teixeira v. BMW of N. Am., LLC*, Case No. 2:22-cv-02338-WLH-MAR,
7 2023 WL 6787457, at *1 (C.D. Cal. Sept. 26, 2023), evidentiary sanctions were
8 issued because the defendant did not comply with the first motion to compel and a
9 second motion was brought after document were still not produced. The Court
10 emphasized that the Plaintiff's counsel identified specific categories of documents,
11 described their relevance, and explained why he believes these documents exist and
12 are in the defendant's control to both the court and the defendant. The defendant on
13 the other hand had failed to directly address the plaintiff's arguments regarding
14 relevance, or even cite the applicable legal standard, case law, or local rules.
15 Instead, the defendant argues that the documents the plaintiff seeks are not
16 necessary for him to litigate his case, despite the fact that the Court has already
17 made the opposite determination.

18 In *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101 (9th Cir.
19 2001) The sanction precluding the testimony was based on the fact that the
20 defendant failed to provide the expert rebuttal report for two and a half years and
21 justified the delay by stating that the expert would only be used as a rebuttal
22 witness and a report would only be issued if the defendant decided to have him
23 testify. The report was eventually produced two years after the close of discovery,
24 more than one year after the plaintiff's damages report was supplemented, and 28
25 days before trial. The defendant only justified the failure to timely produce the
26 report on the fact that they were under the belief that the plaintiff's expert would be
27 supplementing the report again, but the court did not buy this excuse because the
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1 defendant could have issued a preliminary report or asked for an extension on the
2 discovery deadline. The failure to disclose this report was not justified or these
3 reasons.

4 In *Sanchez v. Rodriguez*, 298 F.R.D. 460 (C.D. Cal. 2014), terminating
5 sanctions were issued for several reasons based on the procedural history of the
6 case. First, the plaintiff failed to respond to a motion to compel and thus, the court
7 granted the motion requiring response by a date certain. The court cautioned the
8 plaintiff that failure to comply would result in sanctions. The plaintiff filed for an
9 extension, which was granted. The plaintiff did not produce the documents or
10 provide discovery responses by the new deadline. The defendant filed a motion
11 seeking terminating sanctions when the plaintiff failed to oppose the motion, the
12 court then issued an Order To Show Cause Re: Dismissal Of Action. The plaintiff
13 did not respond to the OSC or contacted the court in anyway. It appears that the
14 non-responsiveness not only to the defendants but the Court resulted in the
15 terminating sanctions. “The plaintiff has flouted several of this Court's Orders,
16 which has caused this action to come to a stall and to consume an unwarranted and
17 inordinate amount of this Court's time and resources to deal with a problem arising
18 solely from plaintiff's failure and refusal to meet his discovery obligations and to
19 comply with court orders.” at 472.

20 In *In re Heritage Bond Lit.*, 223 F.R.D. 527 (C.D. Cal. 2024), The Court
21 noted “Arguably, however, Rule 37(b)(2) sanctions may be premature because this
22 Court has not yet tried less drastic monetary sanctions against Kasirer defendants to
23 bring about their compliance with the Order of April 22, 2004.” The Court did issue
24 the evidentiary sanctions because they never paid the monetary sanction from the
25 original order. Additionally, they failed to timely disclose clearly relevant
26 documents to Betker plaintiffs and make any effort to obtain the requested
27 documents. The documents they did provide were insufficient and devoid of key
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1 information. The court only awarded civil contempt sanctions because plaintiffs did
2 not provide the Court any basis to award them civil contempt sanctions other than
3 the attorney's fees they sought.

4 In *United States v. Sumitomo Marine & Fire Ins. Co.*, 617 F.2d 1365 (9th
5 Cir. 1980), The defendant maintained that the court ignored the general rule that
6 “neither dismissal nor preclusion of evidence that is tantamount to dismissal may be
7 imposed when the failure to comply with discovery orders is due to circumstances
8 beyond the disobedient party's control.” However, this was not exactly the case.
9 Sanctions were issued in the above cited case after 18 months of delay and failures
10 during that time period to comply with the court ordered discovery. While the Court
11 identified that the delay in complying with the order was likely due to short
12 staffing, the trial court stated that “if the government counsel's problem was
13 insufficient staffing, then perhaps the imposition of sanctions would generate some
14 help from the Justice Department.” A series of warnings from the district court,
15 including the assessment of \$500 in sanctions against the government counsel in
16 March 1976, failed to convince the government that discovery orders were to be
17 strictly followed in this case. Therefore, the court had no other choice but to issue a
18 preclusion sanction.

19 In *Potlatch Corp. v. U.S.*, 679 F.2d 153 (9th Cir. 1982), the facts are not even
20 close to the instant one. It pertains to the government’s inability to meet the
21 deadline because before an expert could be hired, the government Defendant had to
22 overcome bureaucratic delays between government agencies. Specifically, the
23 Government Defendant had to “secure the administrative file on this matter from
24 the IRS, to study it, and to secure the defense recommendations of the Department
25 before he could file the Government's answer; his need to find and interview
26 appraisers able and willing to act and report within what was sure to be a limited
27 period of time; his need to make a choice of appraisers and negotiate a fee likely to
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1 prove acceptable in Washington before authority to hire could be sought; and the
2 need for the FBI to check the experts selected before authority to hire could be
3 granted.” None of this is even relevant or equitable to this our case.

4 **IV. CONCLUSION**

5 For the reasons discussed above, the SPAVI Parties respectfully request that
6 the Court overrule the objections by the PCJV USA Parties to the Report.

7
8
9 Dated: July 9, 2025

FOX ROTHSCHILD LLP

11
12 /s/ Michael D. Murphy

13 Michael D. Murphy

14 Matthew Follett

15 Jordan Zollicoffer

16 Attorneys for Plaintiff and Counterclaim

17 Defendant SHAKEY’S PIZZA ASIA

18 VENTURES, INC. and Third-Party

19 Defendants CINCO CORPORATION,

20 PC INTERNATIONAL PTE LTD., and

21 SPAVI INTERNATIONAL USA, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that, on July 9, 2025, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's ECF filing system. I further certify that all counsel for all parties to this action are registered CM/ECF user and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Michael d. Murphy
Michael D. Murphy